

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

October 14, 2005 Session

**STATE EX REL. DEBRA WOODARD v. JOHN S. WOODARD**

**Appeal from the Chancery Court for Rutherford County**  
**No. 00DR-1851 Royce Taylor, Judge**

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**No. M2004-01981-COA-R3-CV - Filed on May 16, 2006**

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The State of Tennessee appeals the denial of its *ex rel.* Petition to Set Child Support for the benefit of a mother and her three children. The parents of the children were granted a divorce in 2001, a year prior to the filing of this petition. Pursuant to the Divorce Decree and Permanent Parenting Plan, the mother was designated as the custodial parent and she was awarded equal parenting time with the father; however, the father was excused from paying child support other than medical insurance and expenses. Subsequent to the divorce, the mother qualified for public assistance, which led to the State filing this petition. The Chancellor dismissed the State's petition based upon the conclusion child support was set pursuant to a previous order that had become final and the State's petition was deficient on its face because it did not allege a substantial and material change of circumstances. Finding no error, we affirm the dismissal of the State's petition.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, J., and ROBERT W. WEDEMEYER, SP. J., joined.

Paul G. Summers, Attorney General and Reporter; and Stuart F. Wilson-Patton, Senior Counsel, for the appellant, State of Tennessee, ex rel. Debra Woodard.

Brad W. Hornsby and Kerry Knox, Murfreesboro, Tennessee, for the appellee, John S. Woodard.

**OPINION**

This action originated in September of 2002 when the State of Tennessee filed what it entitled a "Petition To Set Support" in the Chancery Court of Rutherford County, Tennessee on behalf of the mother of three minor children. The origins of this action, however, emanate from a Divorce Decree entered more than one year earlier, in July of 2001.

Father, John S. Woodard, and Mother, Debra Woodard, were married in 1989 and had three minor children during the course of the marriage. The parties separated in July of 2000 and in December of 2000, Father filed a petition for divorce. The trial court appointed a Special Master to

conduct a pendente lite hearing. Following the hearing, the Special Master issued a report recommending equal parenting time, and due to the equal parenting time, neither party should pay child support despite the finding that Father earned \$900 per week while Mother earned \$315 per week. The Special Master's recommendations were adopted by the trial court and a Final Decree of Divorce was entered in November 2001, which incorporated the Marital Dissolution Agreement and the Parenting Plan submitted by Mother and Father.

The 2001 Parenting Plan provided for equal parenting time and designated Mother as the custodial parent. Although Father earned \$900 per week while Mother earned \$315 per week, the 2001 Parenting Plan only required Father to provide the children's health insurance, half of the uncovered medical expenses and half of the dental and orthodontic care costs. The Plan additionally afforded Mother the tax deduction for each child.

The section of the Parenting Plan addressing financial support for the children, section 5.1, made no provision for the payment of child support other than the medical and dental provisions addressed above. It also failed to include the amount of child support that would have been owing had the Child Support Guidelines been followed, as required by Tenn. Code Ann. § 36-5-101(e)(1)(A). The explanation stated in the Parenting Plan reads, "The guidelines are being deviated from because of equal time spent with children. School supplies expenses will be divided equally. Extraciracular [sic] act., clothing & daycare will be the responsibility of whoever [sic] has the children at the time needed."

After the divorce, Mother and the children began receiving cash public assistance benefits from the State of Tennessee under the Temporary Assistance to Needy Families program. On January 31, 2003, the State, *ex rel.* Debra Woodard filed the petition at issue to retroactively "set support" based upon the Tennessee Child Support Guidelines. The State's petition reads in pertinent part:

#### PETITION TO SET SUPPORT

COMES NOW the Petitioner, pursuant to Tennessee Code Annotated Title 36, Chapter 5, and states unto the Court as follows,

##### I.

That DEBRA A. WOODARD is the custodian and the Respondent is the parent of the following child(ren):

. . . .

##### II.

The children reside with DEBRA A. WOODARD in RUTHERFORD County, Tennessee. . . .

### III.

That the Respondent has a legal duty to support said children but has failed and refused to do so. Petitioner requests an amount of support be ordered based on the Tennessee Child Support Guidelines. *FURTHER*, Petitioner requests medical and dental insurance be ordered for the minor child(ren).

#### WHEREFORE, PETITIONER PRAYS:

1. That this petition be filed and a date set for hearing and that Notice of said hearing be served on Respondent as provided in TCA Section 36-5-405(a).
2. That this Court require the Respondent to pay current child support for said children in accordance with the State guidelines by income assignment.
3. That the Respondent be ordered to provide medical insurance for said children.
4. That Petitioner be granted a judgment for retroactive child support on behalf of the minor children.

....

In response to the petition filed by the State, Father filed an answer followed by a Motion for Judgment on the Pleadings pursuant to Tenn. R. Civ. P. 12.03, stating: (1) that the Court had previously found the Parenting Plan in the best interests of the children, (2) that the parties agreed to equally split parenting time and based upon the parenting time agreed neither party would owe support, (3) that to offset the income disparity, Father would maintain medical insurance and Mother would receive the income tax deductions for all three children, and (4) Mother failed to allege a substantial change in circumstance to necessitate a modification in the child support obligation. Following a hearing on the motion, the trial court dismissed the petition.<sup>1</sup> The relevant findings by the trial court, as stated in its July 22, 2004 Order, are as follows:

1. Debra Woodard and John S. Woodard were granted a divorce by this Honorable Court.
2. The parenting plan entered into by and between the parties was in compliance with the guidelines in effect in the state of Tennessee given that both parties were sharing the children equally. Furthermore, to offset the income

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<sup>1</sup>In the interim, the court dismissed the petition based upon the State's failure to appear at the first setting of Father's motion. The State then filed a motion for relief from the judgment, which the Chancellor granted at the hearing on July 22, 2004. In the same order the court went on to make the findings and ruling at issue in this opinion.

differential, in lieu of paying child support, Father gave to mother tax exemptions for the three (3) children and paid the entire cost of medical insurance.

3. That both parties were represented by counsel and the parenting plan was approved by this court after testimony in open court.

4. After the divorce was granted, Mother, Debra Woodard, was temporarily laid off from her job which happens every year during the summer and anticipated at the time the parties were divorced.

5. The State has not alleged a substantial and material change of circumstances to warrant setting aside a valid order of this Court.

....

It is therefore Ordered, Adjudged and Decreed that the petition filed by the State of Tennessee be dismissed with prejudice.

The State argues on appeal it is not required to allege a material change in circumstances nor allege a basis for modification because, it contends, the 2001 Divorce Decree did not set child support. It further argues that the Divorce Decree is void as a matter of law based upon the trial court's failure to comply with the legal requirements for a deviation from the Guidelines. Finally, the State claims it has an independent right to pursue reimbursements, and the parties should not have been required to engage in mediation based upon the Petition to Set Support in a Title IV-D Case.

#### ANALYSIS

The State raises issues on appeal that were not properly presented to the trial court. All parties, including the State, have an affirmative duty to bring issues to the attention of the trial court before complaining on appeal. We have long held that a party may not complain of a matter on appeal if it failed to bring such to the attention of the trial court. *Sparks v. Metropolitan Gov't. of Nashville and Davidson County*, 771 S.W.2d 430, 434 (Tenn. Ct. App. 1989) (citing *Irvin v. Binkley*, 577 S.W.2d 677 (Tenn. Ct. App. 1978)); *see also Smith v. Harriman Utility Bd.*, 26 S.W.3d 879, 887 (Tenn. Ct. App. 2000); *Tomlin by Cockerham v. Warren*, 958 S.W.2d 354, 356 (Tenn. Ct. App. 1997); *Stewart Title Guar. Co. v. F.D.I.C.*, 936 S.W.2d 266, 270-271 (Tenn. Ct. App. 1996). For these reasons we are disinclined to consider all of the issues complained of by the State. Nevertheless, in the interest of judicial economy we agree to address the issue concerning the validity of the 2001 Parenting Plan; otherwise the parties will likely be back in short order on the same issue.

It is important to understand the procedural posture of this appeal. This appeal is not a direct appeal of the 2001 Parenting Plan that is at the center of the controversy. Moreover, the State's

petition in the trial court was entitled, “Petition to Set Child Support.”<sup>2</sup> Consistent with the title of the petition, the relief requested was to “set” child support. Of further significance, the petition did not properly present the issue of the validity of the 2001 Parenting Plan to the trial court. It is also important to recognize the Parenting Plan had become a final judgment. In fact, it had been final for a year when the petition at issue was filed.

On appeal, the State contends the 2001 Parenting Plan is void because Father was effectively relieved of his duty to pay child support. As stated in its July 22 Order dismissing the State’s petition at issue, the trial court is of the opinion it set child support in the 2001 Parenting Plan by requiring that Father pay medical insurance and half of the medical and dental costs. Although we find deficiencies in the 2001 Parenting Plan<sup>3</sup>, Father was required to provide medical insurance and to reimburse Mother for half of the medical and dental expenses; thus, he was not effectively relieved of his duty to pay child support as the State contends.

The principle of law at the center of this controversy is that the duty of a parent to support his or her child cannot be bargained away. *Berryhill v. Rhodes*, 21 S.W.3d 188, 193 (Tenn. 2000). Agreements incorporated into decrees which purport to relieve a parent of his or her child support obligation are void as against public policy. *Witt v. Witt*, 929 S.W.2d 360, 363 (Tenn. Ct. App. 1996); *Neal v. Neal*, No. M2003-02703-COA-R3-CV, 2005 WL 1819214, at \*1-3 (Tenn. Ct. App. Jan. 6, 2005).<sup>4</sup> Likewise, agreements not to seek future increases in child support are also void as against public policy. *Berryhill*, 21 S.W.3d at 193.

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<sup>2</sup>The substance of the petition was stated earlier in this opinion.

<sup>3</sup>One of the deficiencies is the 2001 Parenting Plan does not state the amount of child support Father would have paid had the Guidelines applied. Child Support Guidelines have the force of law. *Jahn v. Jahn*, 932 S.W.2d 939, 943 (Tenn. Ct. App. 1996). Any deviation from the guidelines must be stated on the record. Tenn.Code Ann. § 36-5-101(e)(1). If the guidelines are not followed, the court must make written specific findings that their application would be unjust or inappropriate, stating the amount that should be awarded under the guidelines, along with justification for the deviation. Tenn. Comp. R. & Regs. Ch. 1240-2-4-.02(2), (7); *see Gray v. Gray*, 78 S.W.3d 881, 885 (Tenn. 2002); *see also State ex rel. Wrzesniewski v. Miller*, 77 S.W.3d 195, 197 (Tenn. Ct. App. 2001).

<sup>4</sup>In *Neal*, the parents of two minor children filed their Marital Dissolution Agreement and Permanent Parenting Plan; however, the Permanent Parenting Plan failed to provide any child support. The Plan merely stated: “That the parties shall share parenting of their minor children on an equal basis and no child support shall be paid by either party.” It went on to provide “Defendant further agrees to reimburse Plaintiff ½ of costs for the purchase of clothing, pictures and supplies for school providing that the Plaintiff provides a receipt for the purchase of said items.” No reason was given by the trial court for deviating from the Guidelines. The order merely stated, “The Permanent Parenting Plan, as filed with the court, is appropriate.”

Mrs. Neal filed a petition to modify requesting child support. Mr. Neal filed a Counter Petition requesting custody and child support. The trial court dismissed both petitions, finding no change of circumstances since the final decree of divorce. Both parents appealed. After reviewing the Parenting Plan and Final Decree of Divorce, this Court found the Permanent Parenting Plan substantially failed to comply with the Guidelines, vacated the Permanent Parenting Plan and remanded.

But for a few exceptions parenting plans are drafted by the parties and submitted to the trial court for approval. Thus, the fault, at least at first, for deficient parenting plans usually lies with the parties. Although the parties are usually authors of their own misfortune, it is a misfortune that also befalls the courts when one of the parties subsequently complains and we attempt to remedy the parties' mess. It is for this and other reasons the trial courts must be vigilant gate-keepers to assure compliance with the applicable child support laws so the parties do not enter into invalid agreements which may pose a threat to the welfare of children or perpetuate a fraud upon others.

For this Court to set aside the now final 2001 Parenting Plan, we must find it void or voidable, the threshold for which is very high. The record before us, which contains little more than the State's Petition to Set and the Motion to Dismiss, does not permit us to make such a conclusion. As this is not a direct appeal of the 2001 Parenting Plan, it is immaterial that the record does not provide a satisfactory explanation justifying a deviation from the Guidelines to the extent Father's child support obligation is limited to insurance and reimbursement of medical and dental expenses, while his income is triple that of Mother. The narrow issue before this Court is whether the 2001 Parenting Plan is void or voidable. Since Father was not relieved of his child support obligations, we find no justification to declare the 2001 Parenting Plan void, as we did in *Witt*, 929 S.W.2d 360 and *Neal*, 2005 WL 1819214.

Although we find deficiencies with the 2001 Parenting Plan, the plan does not relieve Father of his duty to pay child support, and there is no evidence of an agreement to not seek support in the future should there be a material change of circumstances. In the absence of such proof, we find no basis to declare the 2001 Parenting Plan void. In that the 2001 Parenting Plan is a valid final judgment and child support was set in that order, which is a final order, the trial court ruled correctly by dismissing the State's petition because the State failed to plead a material change of circumstances.

Accordingly, we affirm the judgment of the trial court. Costs of appeal are assessed against the State of Tennessee.

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FRANK G. CLEMENT, JR., JUDGE